IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2175 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVIND @ FIGHTER S/O NARAYAN BHAI VAGHELA (VAGHARI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2175 of 2003

MR AR SHAIKH for Petitioner No. 1

MR VB SHETH Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 29/04/2003

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the legality and validity of the detention

order passed by the Police Commissioner, Ahmedabad City dated 3.9.2002 in exercise of powers vested under him by sub-section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "PASA Act") branding the petitioner-detenu as dangerous person within the meaning of sec. 2(c) of the PASA Act.

I have carefully perused the order of detention as well as the grounds served to the detenu by the authority while executing the order of detention. The table for the grounds of detention dated 3.9.2002 shows that the petitioner is involved in eight different offences registered with Ahmedabad Railway Police between 25.5.2002 and 5.8.2002. While recording the subjective satisfaction, the authority has mainly placed reliance on the registration of eight criminal cases. The last offence registered against the petitioner is 5.8.2002. It seems that in that offence he was found involved in lifting the Airbag from the Railway Compartment. It is rightly pointed out that on his arrest in the last offence, he has been implicated in number of offences registered earlier with the Ahmedabad Railway Police.

The petitioner has challenged the legality and validity of the order of detention on number of grounds, however, ld. counsel for the petitioner has concentrated her arguments mainly on two grounds. First ground is that the ratio of the decision of this Court reported in AIR SC p. 3675 is squarely applies to the facts of this case. The second point argued by the ld. counsel is that the day on which the present petitioner was ordered to be detained, he was already in judicial custody and no reasonable attempts were made to get the bail pending trial. The totality also leads me to a conclusion that even for the sake of arguments that the petitioner is involved in all these offences, than it can be said to be a question pertaining to law and order and cannot be said to be a threat against the maintenance of public order. For short, this petition deserves to be allowed.

In the result, this petition is allowed. The impugned order of detention dated 3.9.2002 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. The petitioner-detenu- Govind @ Fighter S/o Narayanbhai Vaghela (Vaghri) is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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